SINGAPORE REPORTS.

REX v. FORREST & OTHERS.

[Orig. Crim. Juris. (Brown, J.) December 9, 1948]
[Singapore — Assize Cases Nos. 277, 305 and 316 of 1948]

Criminal Procedure Code Chapter XIII —Whether R.A.F. Provost Staff are Police Officers —Whether investigations carried on by them are Police investigations under Chapter XIII of Criminal Procedure Code — Statements to Provost Officers — Criminal Procedure Code S. 124.

At the trial of the accused in this case, it was argued that statements by the first, second, third and fourth accused who were members of the Royal Air Force, to the Provost Staff of the Royal Air Force, were inadmissible as being statements made to police officers in the course of the police investigation.

Held, (1) that as far as service personnel are concerned, the members of the Provost Staff of the Royal Air Force are Police officers as they have powers of detention and investigation; (2) that on the facts the statements in this case were made to the R.A.F. Provost Staff in the course of an investigation which they alone were conducting and therefore such statements did not come within S. 124 of the Criminal Procedure Code.

Cases referred to :—

(1) *Jubri bin Haji Salleh v. Public Prosecutor* (1947) M.L.J. 88.

(2) *Public Prosecutor v. Ramasamy* (1939) M.L.J. 163.

RULING IN CRIMINAL TRIAL.

A. D. Farrell (D. P. P.) for the Crown.

S. H. D. Elias for Accused Nos. 1 — 4.

H. A. Francis for Accused No. 5.

Brown, J. : — There can be no doubt that Proclamation 33 renders Sections 25 and 26 of the Evidence Ordinance inapplicable to the statements which are the subject of discussion. The argument that the R.A.F. provost staff, while they are not to be deemed to be Police Officers for the purpose of these sections in their capacity as members of the "Air Force provost staff", are nevertheless to be regarded as Police Officers in their capacity as "ordinary members of the Armed Forces in uniform" when called upon under Proclamation 57 is, for a number of reasons which I shall forbear to set out, wholly untenable and was not I think seriously put forward.

But there remains the provision of section 124 of the Criminal Procedure Code whereby no statement made by any person to a police officer in the course of a police investigation under Chapter XIII of the Criminal Procedure Code shall be used in evidence. This raises two questions: firstly, are the members of the R.A.F. provost staff (for all practical purposes) Police officers; secondly, if they are, were the statements made to them in the course of a police investigation under Chapter XIII of the Criminal Procedure Code?

Bearing in mind the Court of Criminal Appeal Judgment in *Jubri bin Haji Salleh v. Public Prosecutor*[1] particular attention was directed to eliciting evidence relating to the powers of detention and of investigation possessed by the R.A.F. provost staff. In regard to civilians they possess no powers at all. Therefore any statement made to them by No. 5 accused would not be inadmissible. But in regard to service personnel their powers of detention are no less than those conferred upon members of the Police Force in the Criminal Procedure Code. In investigating a case no express power is conferred upon them to require service personnel to attend before them and to make statements such as is conferred upon members of the Police Force by sections 122(1) and 123(1) of the Criminal Procedure Code. But by section 6(3) (c) of the Air Force Act the refusal to assist a member of the provost staff in the execution of his duty is an offence punishable by court-martial; and, as was conceded by Flight-Sergeant McCarthy in his evidence, the refusal to make a statement by a person subject to the Act, who had the required information in his possession, would be conduct to the prejudice of good order and discipline for which he could be punished by his Commanding Officer. Therefore the sanction exists, as in the case of a civilian it exists under the Penal and Criminal Procedure Codes. And in my view the power of obtaining statements from service personnel which is possessed by members of the provost staff in the course of an investigation differs little in practice from the power which police officers have by law under the Criminal Procedure Code, because in both cases a person who refuses to make a statement can be punished. It therefore seems to me that members of the Air Force provost staff must be regarded as Police officers in their dealings with service personnel, and that the statements made by Nos. 1 — 4 accused must be treated as statements made to Police Officers.

The more difficult question is whether these statements were made to the members of the provost staff in the course of a police investigation made under Chapter XIII of the Criminal Procedure Code. If this was a separate investigation conducted by the R.A.F., independently of any Police investigation, clearly section 124 of the Criminal Procedure Code would not apply. And I have no hesitation in holding that that is what it was at the time when the statement was made by No. 1 accused. This statement was made to Squadron Leader Smith and Flight-Sergeant McCarthy

in the United Kingdom in March or April. By that time Inspector Elam Din was out of the case, having closed the Police investigation file which he had handed over to Inspector Mong in February, and we have it in evidence from Inspector Mong that from that time he took no active step in investigating the matter, nor did any member of the Police Force. Clearly when Forrest made his statement in the United Kingdom it was in the course of an investigation conducted solely by the R.A.F. and the provisions of section 124 of the Criminal Procedure Code do not apply to it.

But the statements of Nos. 2, 3 and 4 accused were made on the 4th February. And the question which I have to determine, upon the evidence, is whether at that time, the investigation in the course of which these statements were made was an R.A.F. investigation or whether it was a Police investigation under Chapter XIII of the Criminal Procedure Code in which the R.A.F. were assisting.

The Police investigation file was not formally closed until the 5th February. Speaking of the part taken by the R.A.F. in the course of his investigation, Inspector Elam Din says "we were working together. They reported to me. It was a joint investigation. They reported progress to me. I reported progress to them." No doubt that was the fact in the early stages. But it was not the fact on the 4th February. The identification parade at Paya Lebar was held by the R.A.F. on their own initiative, and Inspector Elam Din was neither asked to send the two civilian witnesses, Low and Tan, nor informed that the parade was to take place. No Police Officer attended the parade. No report was made to the Police that the parade had taken place. A.S.P. Haines, who was Inspector Elam Din's superior officer and was called to give evidence at the suggestion of Mr. Elias, said on referring to the Police Diary that the last recorded act of Inspector Elam Din in the course of his investigation was on the 31st January, when the lorry was photographed. In my opinion the fact that no report was made to the Police of the identification parade on 4th February, coupled with the fact that the statements of Nos. 2, 3 and 4 accused were not sent to the Police for inclusion in their file, is significant upon this question of whether the statements were made in the course of a Police investigation under Chapter XIII or in the course of an investigation conducted by the R.A.F. alone. We have it in evidence from Mr. Haines that he knew nothing of the statements or of the parade until a day or two prior to 4th March, on which date having reason to believe that a civilian (Ginsberg) was involved the Police took over the case. The fact that these statements implicate Ginsberg supports Mr. Haines' evidence, because if he had seen the statements shortly after they were made, or copies of them, he would have seen that they implicated a civilian and would have taken over the case then. But it is clear that when the R.A.F. provost staff came to him on 5th February they only came to ask for his assistance in the matter of obtaining search warrants, and that from that time at any rate until he took over the case it was solely an R.A.F. investigation.

I cannot see that the case of *P. P. v. Ramasamy*[2] is of any assistance on this point. In that case there was only one investigation, and it was a Police investigation. In this case the question is whether, if any Police investigation was in fact still being conducted on 4th February, there was not a separate and independent R.A.F. investigation, and whether it was not in the course of this separate and independent R.A.F. investigation that these statements were made. I find upon the evidence that the statements were made to the R.A.F provost staff in the course of an investigation which they alone were conducting on 4th February. Section 124 of the Criminal Procedure Code does not therefore apply to them, and I rule that they are admissible in evidence, subject to a consideration of their possible inadmissibility under Section 24 of the Evidence Ordinance.

Ruled Accordingly.

SIN YAT CHI v. REX.

[App. Crim. Juris. (Gordon-Smith, Ag. C.J.)
January 13, 1949]
[Singapore — Magistrate's Appeal No. 195 of 1948]

Societies Ordinance Ss. 12 (1) and 15 (1) — Membership of unlawful society — Presumption from possession of badge of unlawful society — Meaning of possession.

In this case the accused appealed against his conviction of being a member of an unlawful society. The facts were that a badge of the unlawful society was found in a cupboard drawer in a room where the accused and his two employees carried on a tailoring and dressmaking business.

Held, that on the facts the possession by the accused was not proved beyond reasonable doubt and therefore the presumption under S. 15(1) of the Societies Ordinance did not arise and the conviction must be quashed.

Cases referred to:—

(1) *Loh Chak Wan v. P. P.* (1939) M.L.J. 84.
(2) *Goh Kong Tuan* 1 Johore Law Reports 44.
(3) *R. v. Harris* (1925) L.J. K.B. 164.
(4) *Toh Ah Loh and Mak Thim v. Rex* (1949) M.L.J. 54.

MAGISTRATE'S APPEAL.

M. B. Brash for the Appellant.